

**United States Department of Labor
Employees' Compensation Appeals Board**

M.S., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Sandston, VA, Employer

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**Docket No. 10-853
Issued: November 10, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 12, 2010 appellant filed a timely appeal from a February 3, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a 31 percent permanent impairment to her right leg.

FACTUAL HISTORY

On August 12, 2004 appellant, then a 49-year-old equipment operator, filed an occupational claim (Form CA-2) alleging that she sustained a right knee injury causally related to her federal employment. The Office accepted the claim on November 9, 2004 for aggravation of preexisting patellofemoral chondromalacia/osteoarthritis/medial meniscus tear of the right knee. Appellant returned to work intermittently and stopped working in May 2005. She underwent a right total knee replacement on March 15, 2006. The record indicates that appellant

elected retirement benefits over those under the Federal Employees' Compensation Act and her compensation was terminated on February 26, 2009.

On February 6, 2008 appellant submitted a claim for compensation (Form CA-7) for a schedule award. She submitted a January 29, 2008 report from Dr. William Brickhouse, an orthopedic surgeon, who opined that she had a 49 percent right leg impairment, as outlined in a January 9, 2008 functional capacity evaluation.

By decision dated May 14, 2008, the Office found that the evidence was not sufficient to establish impairment related to her accepted conditions.

In a September 2, 2009 note, Dr. Brickhouse advised that appellant was being referred for a permanent impairment rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*). In a report dated September 25, 2009, a disability examiner provided a history and results on examination. Applying the sixth edition of the A.M.A., *Guides*, the report found a 31 percent right leg impairment under Table 16-3. The impairment was found to be a Class 3 impairment for a fair result from a total knee replacement. The net adjustment formula resulted in an adjustment of -3, based on grade modifiers for functional history, physical examination and clinical studies of 2. The net adjustment therefore resulted in a Grade A or 31 percent right leg impairment.

In a report dated October 13, 2009, Dr. Brickhouse reviewed the results of the September 25, 2009 report and found that appellant's impairment was 31 percent to the right leg. He noted that under the fifth edition the impairment had been rated at 49 percent. In a report dated October 25, 2009, an Office medical adviser opined that based on the sixth edition of the A.M.A., *Guides*, he concurred with an impairment of 31 percent to the right leg. He stated that the date of maximum medical improvement (MMI) was March 15, 2007, a year after the knee replacement surgery.

By decision dated February 3, 2010, the Office issued a schedule award for a 31 percent impairment to the right leg. The period of the award was 89.28 weeks of compensation commencing November 22, 2009.

LEGAL PRECEDENT

Section 8107 of the Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither, the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.² For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.³

ANALYSIS

The schedule award decision in this case is dated February 3, 2010. As noted, all schedule awards issued after May 1, 2009 must be based on the sixth edition of the A.M.A., *Guides*. The attending physician, Dr. Brickhouse, found that the impairment was represented by the September 25, 2009 report of a disability examiner. Under Table 16-3 of the A.M.A., *Guides*, a total knee replacement with a fair result is a CDX (Class of Diagnosis) 3 impairment with a default impairment (Grade C) of 37 percent.⁴ However, the final impairment is determined by using a net adjustment formula, based on grade modifiers for functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).⁵ In this case, the grade modifier applied was 2 for each factor, based on a moderate problem in accord with Tables 16-6 to 16-8. The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁶ Since the grade modifiers are 2 and the CDX is 3, the formula results in $-1 + -1 + -1 = -3$. According to the A.M.A., *Guides*, the Grade C default impairment of 37 percent is modified to a Grade A of 31 percent to the right leg.⁷

Both Dr. Brickhouse and the Office medical adviser concurred that the right leg impairment under the sixth edition was 31 percent. The Board finds that the A.M.A., *Guides* were properly applied in this case to determine the right leg permanent impairment.

On appeal, appellant notes that her impairment rating was 49 percent as calculated under the fifth edition of the A.M.A., *Guides*. However, the only decision before the Board with respect to a schedule award is the February 3, 2010 decision. As noted above, a schedule award decision issued on or after May 1, 2009 is to be based on the sixth edition. The February 3, 2010 decision was properly based on the sixth edition of the A.M.A., *Guides*. Pursuant to 5 U.S.C.

² A. *George Lampo*, 45 ECAB 441 (1994).

³ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁴ A.M.A., *Guides* 511, Table 16-3.

⁵ *Id.* 515-21.

⁶ *Id.* 521.

⁷ *Id.* Table 16-3.

§ 8107(c), the maximum number of weeks of compensation for impairment to the right leg is 288 weeks. Appellant is therefore entitled to 31 percent of 288 or 89.28 weeks of compensation.⁸

CONCLUSION

The Board finds that appellant has not established more than a 31 percent right leg permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 3, 2010 is affirmed.

Issued: November 10, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁸ Appellant also stated that the date of MMI was reported as March 15, 2007 but she requested her schedule award in February 2009 (actually, the date of the CA-7 was February 2008). The date of MMI is based on the probative medical evidence and the period covered by a schedule award commences on the date of MMI. See *Mark A. Holloway*, 55 ECAB 321 (2004). The Board notes that appellant had received compensation for wage loss through February 2009 and would not be entitled to a schedule award during a period she already received wage-loss compensation. *James A. Earle*, 51 ECAB 567 (2000); *Andrew B. Poe*, 27 ECAB 510 (1976). According to the February 3, 2010 decision, the period of the award began November 22, 2009, when appellant was not receiving compensation and therefore there is no evidence of an adverse determination regarding MMI or the period of the award.